19 50. K **File No.** Co. Off. II/50 (R)

Legal Dept:

B **BRANCH**

Subject:— Rules under the Bombay Co-operative Societies Act, 1925.

File No. Co. Off. II/1950 (R).

Gen. 194 a.

Legal Department.

In the revision application No. 56/1949, pending before the Bombay Co-operative Tribunal, the Ahmedabad District Industrial Co-operative Association Ltd., is the opponent and Mr. L.A. Patel who is one of the members of this Tribunal is a Director of this Association. Having regard to the well-known principle that no man can be a judge in his own cause, the President of the Tribunal has requested Government to take the necessary steps to appoint another member in place of Mr. L.A. Patel for deciding the revision application. The question raised for consideration is whether this is legally feasible.

2. Under section 63A(2) of the Bombay Co-operative Societies Act, 1925, 'the Tribunal shall consist of not more than three members possessing such qualifications as may be prescribed' and under sub-section(3) 'any vacancy in the membership of the Tribunal shall be filled by the State Government.' The Bombay Co-operative Tribunal Rules, 1948, have been framed by Government under section 71. Under Rule 7 sub-rule (1) of these rules 'If any vacancy occurs by leave of absence, deputation, death, resignation, expiry of the period of appointment, termination of the appointment, or for any other cause whatsoever, such vacancy shall be filled by a person qualified for appointment under rule 4.' The disability of any member by reason of his being interested in any case will not cause any vacancy under Rule 7. Consequently, it would not be legally feasible to appoint any other person in place of Mr. L.A. Patel to decide the pending revision application unless the Rules are properly amended.

3. Under Rule 3, 'the Tribunal shall consist of a President and two other members'. It is possible to add a separate rule to the effect that in cases where any member is unable to sit by reason of his

being interested for any of the parties, Government may appoint some other person in his place on the Tribunal. Such rule will not affect the constitution of the Tribunal as settled by Rule 3 and will enable Government to meet any such contingency as has now arisen. A requisite draft notification for amending the rules suitably is sent herewith.

4. It may be pointed out that in clause 8 of the draft Bill to amend the Bombay Co-operative Societies Act, 1925, furnished to the Development Department with U.O.No.2756 dated 25th February 1950, a provision has been made to form benches of two members for disposal of the business of the Tribunal. After the Bill is passed into an Act, the present rules will require suitable modifications.

Sd/-

Additional Secretary to Government.

U.O.to D.D.No. 4394, dated the 30th March 1950.

N.V.D.
21/6
4c.

Legal Department.

Para 8 of D.D's note at page 3 ante.-

A revised draft notification under sub-rule (2) of rule 8 of the Bombay Co-operative Societies Rules, 1927, is sent herewith subject to the following observations:

It has already been pointed out in the Additional Secretary's opinion, No. 10378, dated the 5th November 1948, that the Registrar has under rule 8(1) of the Rules the full authority to permit a society to incur liability upto such limits as he deems fit. If now Government thinks that in the case of purchase and Sale Unions selected by Government for the purpose of doing wholesale distribution of yarn or in the case of Land Mortgage Banks, the limit of liability should not exceed twenty times the total amount of its paid up share capital etc. Government may issue executive instruction to the Registrar not to give sanction beyond the above limit for the reasons stated below in para 4.

2. Para 4 of D.D's note at p.3.

Subject to the remarks made by the Secretary, Development Department, at page 4 in the margin, there is no legal objection to the draft proviso as proposed to be amended. A draft is appended here to for consideration.

3. Para 5 of D.D's note at page 4.

The draft order at page 41 of L.L.File No. 2752/45 as amended in view of the Registrar's opinion is not necessary for the following reasons.

It has been already pointed out in the Additional Secretary's opinion, No. 10378, dated the 5th November 1948, that the Registrar has not to approach Government in each case for sanction but that he himself has full authority to permit a society to incur liability upto such limit as he deems fit. No maximum limit

of borrowing upto which the Registrar could give his sanction to a society has been specified in rule 8. He is to use his discretion in each case on merits. Nor any limit as to the occasions on which such higher borrowing might be permitted has been fixed. It appears from the draft at page 41 of L.I.File No. 2752/45 that certain District Municipal Association and Primary Weavers' Societies, which have been selected by Government as District wholesalers for the distribution of yarn for efficiently carrying out their obligation as such wholesale distributors want to incur liability to the extent of 100 times the total amount of their paid up share capital etc. The Registrar has full powers under rule 8(2) to give sanction to the said request subject only to this limitation that if Government has specified any conditions to be complied with by such societies under sub-rule(8) of rule 8 the Registrar has to bring to their notice any such conditions. That the Registrar can lay conditions [redacted] at page 59 of R.D. File No.2752/45 are no condition of the nature described in rule 8(2). As stated above, the Registrar has full powers of sanctioning of the incurring of liabilities by a society to any extent he deems fit nor the occasions on which he is to give such sanction are in any way curtailed. No notification at page 41 of file 2752/45 is therefore required to be issued by Government. Government may issue executive instructions as to the limits borrowing in such class of societies.

4. The intention of Rule 8(2) of the Bombay Co-operative Societies Rule , 1927, is that the Society which has obtained the previous sanction of the Registrar shall observe the conditions which Government may by general or special order specify, generally or for a class of societies.

To make.....

To make this intention clear Rule 8(2) may be amended, as now shown in the draft appended. It seems also necessary that the Registrar should have the power to refuse to give the sanction xx against to a Society which has contravened any o of the conditions specified by Government.

Sd/-

Additional Secretary to Government.

U.R. to D.D.No. 13156 dated the 14th Septemeber 1950.

Legal Department.

Before the draft notifications at pp. 7-9 of the correspondence section are scrutinized from the legal point of view the Development Department is requested to forward their files containing papers underlying Government Resolutions, Revenue Department, Nos. 1866/33 and 4258/33, dated the 5th October 1934 and 22nd November 1935 respectively and Government Notification, Revenue Department, No. 7096/33, dated the 22nd November 1935, referred to in rule 19 of the Bombay Co-operative Societies Rules, 1927, for the perusal of the Remembrancer of Legal Affairs.

sd/-

For Secretary to Government.

U.F. to D.D., No. 12860, dated the 9th September 1950.

N.V.D.
21/6
4c.

Legal Department.

Section 139(c) of the Bombay Prohibition Act, 1949, is similar in substance to the provisions of section 67 of the Bombay Co-operative Societies Act, 1925. That provision was however held to be invalid by the High Court in the Prohibition case on the ground that it amounts to delegating to the executive the power of a Legislature. Solving that decision stands and has not been set aside by the Supreme Court, it would not be legal to use Section 67 of the Bombay Co-operative Societies Act for carrying out modifications of rule 19. Section 71 of the Bombay Co-operative Societies Act provides that the State may for any society or class of societies make rules to carry out the purposes of the Act. As the rules can be made for a class of societies it would be legally feasible to amend rule 19 of the Rules in its application to the Forest Labourers Co-operative Societies. A revised draft notification is sent herewith. As the said societies are required to hold the annual general meeting within a period of three months now fixed for making up their accounts for the year it would be wrong to exempt them from section 12 as proposed by Development Department. In view of the new date for making up the accounts a transitory provision is made in sub-rule (1B) for preparing their next balance sheets.

Sd/-

Additional Secretary to Government.

U.R. to Dev. Deptt. No. 18288 dated 28th December 1950.

N.V.D.
21/5
4c.

30/1

30/4